



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board of Counseling
Virginia Administrative Code (VAC) citation	18VAC115-20-10 et seq.
Regulation title	Regulations Governing the Practice of Professional Counseling
Action title	Periodic review
Date this document prepared	6/9/11

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The Board has conducted a comprehensive review of current regulations governing the practice of professional counseling and determined that it is essential to continue the regulation of licensed professional counselors, but that there are modifications necessary to clarify and update requirements.

A person who holds a license as a professional counselor is licensed to provide clinical services to clients. In recent months, the Board has become increasingly concerned that the education and experience of some applicants for licensure by examination or endorsement does not provide assurance of minimal competency in clinical counseling.

Additionally, the Board has found some gaps in its standards of practice and grounds for unprofessional conduct which it intends to close with proposed amendments.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly

chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400, which provides the Board of Counseling the authority to promulgate regulations to administer the regulatory system:

§ 54.1-2400 -General powers and duties of health regulatory boards

The general powers and duties of health regulatory boards shall be:

- 1. To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
- 2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
- 3. To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*
- ...*
- 6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ [54.1-100](#) et seq.) and Chapter 25 (§ [54.1-2500](#) et seq.) of this title. ...*

The specific authority for the promulgation of regulations for counseling-related professions is found in Section 54.1-3505 of the Code of Virginia:

§ 54.1-3505. Specific powers and duties of the Board.

In addition to the powers granted in § [54.1-2400](#), the Board shall have the following specific powers and duties:

- 1. To cooperate with and maintain a close liaison with other professional boards and the community to ensure that regulatory systems stay abreast of community and professional needs.*
- 2. To conduct inspections to ensure that licensees conduct their practices in a competent manner and in conformance with the relevant regulations.*
- 3. To designate specialties within the profession.*
- 4. To administer the certification of rehabilitation providers pursuant to Article 2 (§ [54.1-3510](#) et seq.) of this chapter, including prescribing fees for application processing, examinations, certification and certification renewal.*
- 5. Expired.*

6. To promulgate regulations for the qualifications, education, and experience for licensure of marriage and family therapists. The requirements for clinical membership in the American Association for Marriage and Family Therapy (AAMFT), and the professional examination service's national marriage and family therapy examination may be considered by the Board in the promulgation of these regulations. The educational credit hour, clinical experience hour, and clinical supervision hour requirements for marriage and family therapists shall not be less than the educational credit hour, clinical experience hour, and clinical supervision hour requirements for professional counselors.

7. To promulgate, subject to the requirements of Article 1.1 (§ [54.1-3507](#) et seq.) of this chapter, regulations for the qualifications, education, and experience for licensure of licensed substance abuse treatment practitioners and certification of certified substance abuse counselors and certified substance abuse counseling assistants. The requirements for membership in NAADAC: the Association for Addiction Professionals and its national examination may be considered by the Board in the promulgation of these regulations. The Board also may provide for the consideration and use of the accreditation and examination services offered by the Substance Abuse Certification Alliance of Virginia. The educational credit hour, clinical experience hour, and clinical supervision hour requirements for licensed substance abuse treatment practitioners shall not be less than the educational credit hour, clinical experience hour, and clinical supervision hour requirements for licensed professional counselors. Such regulations also shall establish standards and protocols for the clinical supervision of certified substance abuse counselors and the supervision or direction of certified substance abuse counseling assistants, and reasonable access to the persons providing that supervision or direction in settings other than a licensed facility.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

Since it is the Board’s primary responsibility to license persons with competency adequate to safely treat the public, certain amendments to definitions, counseling coursework, and requirements for licensure are being considered. The intent of the amendments is to ensure that applicants have essential courses and experiences to prepare them for independent practice as professional counselors. Without minimal competency in the provision of clinical services, a counselor could provide inadequate or harmful care to a person with mental health issues.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

In addition to editing and deleting out-dated language in the regulations, the Board proposes to make the following changes:

Section 10. Definitions.

- Clarify that a residency is a post-“graduate” clinical experience rather than a post-“internship” experience.
- Clarify that “supervision” means provision of guidance and instruction *that is specific to the clinical services being performed.*

Section 40. Prerequisites for licensure by examination.

- Change “professional license or certificate” to “mental health or health profession” to clarify what type of license in another jurisdiction must be documented.

Section 45. Prerequisites for licensure by endorsement.

- Change “professional licenses or certificates” to “mental health or health profession” to clarify what type of license in another jurisdiction must be documented.
- In subsection B 2 (b), change “post-licensure clinical practice” to “licensed practice in counseling as defined in § 54.1-3500” or define “clinical practice” in the Definitions section of the regulations.
- Add documentation of licensure as a professional counselor to address recent situations in which persons with other licenses have applied for licensure as a professional counselor by endorsement.

Section 51. Coursework.

- Add the word “counseling” after “professional” to ensure that the professional identity, function and ethics being taught is in counseling rather than a general topic.
- Add language deleted from Section 52 specifying that the internship must include 20 hours of individual on-site supervision, and 20 hours of individual or group off-site supervision and that, in order to count toward the residency, internship hours cannot begin until completion of 30 semester hours toward the graduate degree. Consider specification of essential coursework required prior to beginning an internship to ensure academic preparation for delivery of clinical counseling services under supervision consistent with current guidance document 115-6.
- Delete COAMFTE as an approval body for internships that would automatically qualify for 900 hours of experience towards the residency.
- Also, add language about licensure of clinical or faculty supervisor currently found in Section 52 B (6).

Section 52. Residency.

In subsection B on residency requirements:

- Consider reduction in the total number of hours in a supervised residency to account for the minimum of 600 hours in an internship which is a prerequisite for beginning a residency and is currently counted towards the total of 4,000 hours. Include current language requiring 2,000 hours of face-to-face client contact and specify that those hours must be spent in the delivery of clinical counseling services.
- Consider whether there should be a cap on the number of internship hours earned in a graduate-level accredited program that could be counted towards the residency hours.
- Add a subsection on coursework requirements necessary to begin a supervised residency for provision of counseling services. Language to be included is currently found in Guidance Document 115-6.
- Clarify that the residency must be spent in provision of clinical counseling services and that case management and recordkeeping and considered ancillary services. Training in professional identity and professional ethics is also considered the responsibility of the supervisor in evaluating the resident's readiness for licensure.
- Set a maximum of 4 years (consistent with psychology) for completion of a residency with the ability to request an extension prior to expiration of that period for specific hardship causes.
- Ensure that at least 100 of the 200 hours of supervision required between the supervisor and the resident be spent in face-to-face consultation and review of clinical counseling services.
- Clarify provision stating that residents cannot engage in practice in any area for which they have not had "appropriate education" – term is too subjective and will be amended to terminology such as "graduate-level coursework."

In subsection C:

- Eliminate other professions (over which the Board has no regulatory or disciplinary authority) including psychologists, social workers and physicians as qualified to serve as supervisors for professional counseling,.

Section 70. General examination requirements.

- Amend subsection C to require an applicant to pass the examination within two years rather than take the examination within two years (consistent with Social Work). Change is necessary to avoid licensure of applicant years after completion of education and supervised experience.

Section 106. Continuing competency activity criteria.

- Add local government agencies in the groups that can offer continuing education to include local community service boards and others.

Section 110. Late renewal; reinstatement.

- Clarify that practice with a lapsed or expired license is prohibited.

Section 130. Standards of practice.

- Strengthen prohibition on dual relationships to add "romantic relationship" to "sexual intimacies." Add "students" to the prohibition on relationship with a "supervisee."

Section 140. Grounds for revocation, etc.

- Specify that commission of fraud or misrepresentation in the submission of supervisory forms is grounds for disciplinary action to address recent problems with supervision.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

There are no viable alternatives to amending regulations governing the licensure of professional counselors. Requirements for licensure and standards of practice are set forth in Chapter 20, so there is no other action that would accomplish the essential purpose.

To provide guidance on Board interpretation of its regulations for education and experience, the Board has adopted guidance documents. Guidance document 115-6 states the coursework that must be documented before an applicant is approved to begin supervised practice in counseling. Guidance document 115-7 states supervised experience requirements for the delivery of clinical services for professional counselor licensure. Both documents offer guidance but are not enforceable as a regulation. Therefore, the Board needs to incorporate elements of these documents into Chapter 20.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Townhall website, www.townhall.virginia.gov, or by mail, email, or fax to Elaine Yeatts at elaine.yeatts@dhp.virginia.gov or at 9960 Mayland Drive, Henrico, VA 23233 or by fax at (804) 527-4434. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last day of the public comment period.

A public hearing will be held after publication of proposed regulations and notice of the hearing may be found on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov) and can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, regulatory advisory panels) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The amendments to regulation will be developed by the Regulatory Committee of the Board. All meetings are noticed in advance and open to the public for participation in the process.

On October 1, 2010, the Board convened a summit of representatives of educational institutions in Virginia who offer counseling programs. The summit provided an opportunity to discuss issues relating to education and supervised experience and was useful in conducting the periodic review and developing recommendations.

The Regulatory Committee subsequently met on three occasions (12/10/10; 2/17/11; and 5/5/11) to complete the comprehensive review and recommend changes based on current needs for protection of the public.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The institution of the family and family stability may be strengthened by the availability of licensed professionals who have the education and skills necessary to safely and effectively counsel.

Periodic review

Per Executive Order 14 (2010), each existing regulation shall be reviewed **at least once every four years**.

The Virginia Board of Counseling noticed the public that it is conducting a periodic review of its current regulations governing licensed professional counselors, marriage and family therapists and licensed substance abuse professionals and was requesting comment on the following current regulations:

<u>18 VAC 115-20</u>	Regulations Governing the Practice of Professional Counseling
<u>18 VAC 115-50</u>	Regulations Governing the Practice of Marriage and Family Therapy
<u>18 VAC 115-60</u>	Regulations Governing the Licensure of Substance Abuse Treatment Practitioners

Comment was requested from May 9, 2011 to June 8, 2011; there was no comment received.

Small business impact review

Pursuant to § 2.2-4007.1 E and F each existing regulation shall be reviewed **at least once every five years** to ensure that it minimizes the economic impact on small businesses.

If this NOIRA will include a review of the entire regulation for small business impact, please include, pursuant to § 2.2-4007.1 E and F, a discussion of the agency’s consideration of: (1) the continued need for the regulation; (2) the complexity of the regulation; (3) the extent to the which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (4) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, include a discussion of the agency’s determination whether the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

- 1) The Board has determined a continued need for the regulation, consistent with its licensing responsibility and with the powers granted in § [54.1-2400](#). Additionally, § 54.1-3505 grants the Board the following specific power and duty to “cooperate with and maintain a close liaison with other professional boards and the community to ensure that regulatory systems stay abreast of community and professional needs.”
- 2) Recommendations of the Committee conducting the periodic review include changes to make the regulation more consistent and clearer for applicants and licensees. By incorporating guidance now found in guidance documents, the Board can make regulation more specific and less cumbersome.
- 3) There is no overlap with federal or state law or regulation; the Virginia Board has sole authority to regulate the profession.
- 4) Regulations found in Chapter 20 were last reviewed in 2006 with final amendments becoming effective in 2008. As the profession of counseling has evolved, there is a need

to amend regulations consistent with the current duties and responsibilities of licensees diagnosing and treating clients with mental health issues. Regulations are to be amended for consistency with current practice.

- 5) Amendments to regulation may avoid the unintended consequence now experienced by some applicants who expend time and money obtaining coursework and supervised experience that does not qualify them for a license as a professional counselor.